

01/31/07

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

In re:	:	CASE NUMBERS
GEORGE T. BOGGS,	:	BANKRUPTCY CASE NUMBER
	:	05-40559-MGD
Debtor.	:	
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L. LOU ALLEN,	:	ADVERSARY CASE NUMBER
Chapter 7 Trustee for the Estate of	:	06-04099-MGD
George T. Boggs,	:	
Plaintiff,	:	
v.	:	
JANE J. BOGGS,	:	CHAPTER 7
Defendant.	:	
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**ORDER GRANTING PLAINTIFF TRUSTEE'S
MOTION TO AMEND COMPLAINT**

Before the Court is Chapter 7 Trustee L. Lou Allen's ("Plaintiff" or "Trustee") Motion to Amend Complaint ("Motion to Amend"), filed November 15, 2006. (Docket No. 23). Attached to Trustee's Motion is her proposed Amendment to Complaint ("Amendment"). Jane J. Boggs ("Defendant"), through counsel, filed a response to Plaintiff's Motion to Amend on December 4, 2006. (Docket No. 25). For the reasons set forth below, Plaintiff's Motion to Amend Complaint is **GRANTED**.

On February 11, 2005, George T. Boggs ("Debtor") filed a petition for relief under Chapter 7 of the Bankruptcy Code and Plaintiff was appointed Chapter 7 Trustee. On March 31, 2006, Trustee commenced the above-styled adversary proceeding seeking to recover \$175,000.00, plus interest, from Jane Boggs. Trustee's Complaint alleged that on or about December 22, 2003, Debtor made a lump sum payment of \$175,644.01 on Debtor and Defendant's joint mortgage, which reduced the principal amount owed on the mortgage by \$175,000.00 thereby increasing the equity in the property, titled only in Defendant's name, by \$175,000.00. Trustee's Complaint alleged that the funds used to make the lump sum payment

were the proceeds from Debtor's sale of his 50% stock in his professional accounting corporation and his 1/3 partnership interest in the general partnership that owned the building out of which Debtor's professional corporation operated and that Defendant had no interest in such proceeds. Trustee now moves to amend her Complaint to add counts seeking to avoid any purported interest that Defendant claims to have had in the funds used to make the lump sum payment on the basis that any such interest was obtained through a fraudulent conveyance by Debtor. Trustee argues that the factual basis and legal theory on which her proposed amendments are based remains the same as that set forth in the original Complaint and that Trustee would be able to raise the fraudulent transfer issue defensively without formally amending the Complaint.

Defendant opposes Trustee's Motion arguing that: 1) Trustee seeks to expand the proceedings unnecessarily and Defendant will therefore be prejudiced if Trustee's Motion is granted; 2) Trustee's proposed amendment will subject Defendant to added expenses and the burden of a more complicated and lengthy trial; 3) an amendment to the Complaint will cause undue delay, pointing out that discovery has expired; and 4) Trustee's proposed Amendment does not comply with Federal Rule of Civil Procedure 8(a)(2) and Bankruptcy Rule 7008 in that it does not contain a short and plain statement of the case.

Rule 15(a) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7015 of the Federal Rules of Bankruptcy Procedure, addresses the ability of a party to amend a pleading. When a party seeks to amend its complaint after the defendant has answered, it may do so "only by leave of the court or by written consent of the adverse party." The Federal Rules of Civil Procedure provide for liberal amendment of pleadings. *See* Fed.R.Civ.P. 15(a) (leave to amend "shall be freely given when justice so requires"). Although "[l]eave to amend shall be freely given when justice so requires," a motion to amend may be denied on "numerous grounds" such as "undue delay, undue prejudice to the defendants, and futility of the amendment." *Abramson v. Gonzalez*, 949 F.2d 1567, 1581 (11th Cir. 1992); also

Williams v. Little Rock Mun. Water Works, 21 F.3d 218 (8th Cir. 1994); and *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962). A court cannot deny a motion to amend merely on its own discretion; a “substantial reason” must exist for a court to deny leave to amend. See *Shipner v. Eastern Air Lines, Inc.*, 868 F.2d 401, 407 (11th Cir. 1989).

Defendant argues that specific grounds exist upon which the Court should deny Trustee’s Motion to Amend and the Court will address each in turn. Defendant’s first and second arguments—that Defendant will be prejudiced by Trustee unnecessarily expanding the proceedings and that Defendant will be subject to added expenses and the burden of a more complicated and lengthy trial—are substantially the same and the Court finds the arguments to be without merit. It is undisputed that Trustee’s proposed Amendment contains no new allegations of fact.¹ The original and amended claims are intertwined and the facts surrounding each claim are the same, making it unlikely that the parties will need to engage in a significant amount of additional discovery as a result of the counts set forth in Trustee’s Amendment. Trustee points out that even if she does not amend her Complaint, she could raise the fraudulent conveyance issue “defensively.” More important is the fact that this Court’s denial of Trustee’s Motion to Amend would do nothing to prevent Trustee from filing a separate adversary proceeding against Defendant seeking to avoid the purported fraudulent transfers. The counts set forth in Trustee’s Amendment seek to avoid fraudulent transfers pursuant to 11 U.S.C. § 544(b)(1), for which Defendant may be liable as the transferee pursuant to 11 U.S.C. §§ 550 and 551. Pursuant to 11 U.S.C. § 546(a)(1)(A), the statute of limitations applicable to Trustee with respect to proceedings under § 544 is two years after the filing of Debtor’s petition for relief, which was filed on February 11, 2005. Denying Trustee’s Motion to Amend would not protect Defendant from having to litigate these matters and it follows that Defendant’s interests, and the goals of judicial economy, are best served by allowing Trustee to amend her Complaint. While this alone is reason for the Court to grant

¹ See Trustee’s Motion to Amend at ¶ 18; Defendant’s Response at 2.

Trustee's Motion, the Court will consider Defendant's two remaining arguments.

Defendant's third argument is that Trustee's Motion is untimely and allowing Trustee to amend her Complaint will cause undue delay. Aside from pointing out that the discovery period has expired, Defendant offers no specific facts in support of this argument, so the Court must determine whether granting Trustee leave to amend the Complaint will cause undue delay based on its own review of the record. On the joint motion of the parties, discovery in this adversary proceeding was extended through September 30, 2006. On October 25, 2006, the parties entered into a consent order extending the time within which to file motions for summary judgment through November 22, 2006. On November 15, 2006, just over six weeks after discovery ended, but before motions for summary judgment were due, Trustee filed the Motion to Amend currently before the Court. In light of this pending Motion, Defendant moved to further extend the deadline to file motions for summary judgment through February 27, 2007, and the Court granted the extension. Given the short period of time between the close of discovery and the filing of Trustee's Motion, the fact that no motion for summary judgment had yet been filed, and the interrelated nature of Trustee's original claim and the additional claims added by Trustee's Amendment, the Court cannot conclude that Trustee unduly delayed filing her Motion or that granting Trustee's Motion would cause undue delay. Moreover, Defendant's argument that Trustee's Amendment will cause undue delay is irrelevant in light of the fact that Trustee could file a separate adversary proceeding against Defendant, forcing Defendant to again start the litigation process from scratch.

Finally, Defendant argues that the Amendment attached to Trustee's Motion fails to comply with Rule 8(a)(2) of the Federal Rules of Civil Procedure, which requires only a "short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Fuller v. Johannessen (In re Johannessen)*, 76 F.3d 347, 349-50 (11th Cir. 1996)(quoting *Conley v. Gibson*, 355 U.S. 41, 47, 73 S. Ct. 99, 103 (1957)). Defendant argues that Trustee's Amendment does not comply

with Rule 8(a)(2) in that it does not contain a short and plain statement of the claim, but "[r]ather...asserts three new causes of action."² Presumably, Defendant is arguing that Trustee's Amendment is too verbose or otherwise unclear. Trustee's Amendment sets forth each new count in five, one-sentence long paragraphs by incorporating previous portions of the Complaint, describing the interests purportedly conveyed by Debtor to Defendant, and alleging facts that would deem the conveyances fraudulent pursuant to 11 U.S.C. 544(b)(1). The Court therefore concludes that Trustee's Amendment complies with Rule 8(a)(2) in that it is concise and provides sufficient notice to Defendant regarding the additional claims against her and the grounds upon which they are based.

Seeing that Defendant has established no grounds upon which the Court could deny Trustee's Motion to Amend and in light of the fact that the statute of limitations within which Trustee may bring avoidance actions has not run, the Court concludes that granting Trustee leave to amend her Complaint is warranted. Accordingly, it is

ORDERED that Trustee's Motion to Amend Complaint is hereby **GRANTED**.

The Clerk is directed to serve a copy of this Order upon counsel for Trustee and counsel for Defendant.

IT IS SO ORDERED this the 30th day of January, 2007.



MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE

² Defendant's Response at 4.